

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM

Section 5, Rio Gallina

**MOTION TO ESTABLISH PROCEDURES FOR ENTRY OF
PARTIAL FINAL JUDGMENT AND DECREE ON
SURFACE WATER IRRIGATION RIGHTS IN
SECTION 5 OF THE RIO CHAMA STREAM SYSTEM**

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer and moves the Court to enter an order establishing procedures that will govern the entry of a Partial Final Judgment and Decree on Surface Water Irrigation Rights in Section 5 of the Rio Chama Stream System (Rio Gallina). A proposed form of order adopting the procedures proposed herein is attached as Exhibit A to this Motion.

I. INTRODUCTION

This cause of action is a general adjudication of all water rights in the Rio Chama Stream System, a tributary of the Rio Grande. The adjudication of water rights and the hydrographic survey of the Rio Chama Stream System has been divided into 8 sections. The Court has previously entered a partial final judgment and decree in 4 sections. *See Partial Final Judgment and Decree* filed July 26, 1971 (Section 1) (Doc. 1778); *Partial Final Decree Rio El Rito Stream System* filed June 25, 1973

(Section 4) (Doc. 2394) ; *Partial Final Judgment and Decree Cañones & Polvadera Stream System* filed February 6, 1976 (Section 6) (Doc. 2862); *Final Decree* filed August 7, 1969 (Section 8) (originally filed in State Court on June 1, 1962) (Doc. 49). The Office of the State Engineer completed its hydrographic survey of surface water irrigation uses in Section 5 of the Rio Chama Stream System in 2000 and the State of New Mexico commenced the adjudication of water rights in this section immediately thereafter. *See Notice by State of New Mexico of Filing the Rio Chama Stream System, Rio Gallina Section, Amended Hydrographic Survey* filed January 27, 2000 (Doc. 5878).

The adjudication of the elements of water rights in individual subfiles in Section 5 for surface water irrigation uses was completed by 2007, with the exception of the determination of priority dates and irrigation water requirements. On April 10, 2008, the Court entered its *Order Making Final Determination of Priority Dates and Irrigation Water Requirements in Section 5 of the Rio Chama Stream System, Rio Gallina* (Doc. 9167). The Court's determination of priority dates and irrigation water requirements in Section 5 is binding on all claimants, known and unknown, diverting and using surface water in Section 5. Claimants in Section 5 have yet to be provided with an opportunity to file *inter se* objections to the remaining water rights elements in subfile orders previously entered in Section 5, such as the location and amount of irrigated acreage.

II. *INTER SE* PROCEEDINGS AND ENTRY OF PARTIAL FINAL JUDGMENT AND DECREE

The State of New Mexico ("State") proposes the following procedures that would require all persons claiming water rights in Section 5 to file *inter se* objections, if any, to the determination of water rights in individual subfile orders entered in Section 5, and that would lead to the entry of a

Partial Final Judgment and Decree on Surface Water Irrigation Rights in Section 5 of the Rio Chama Stream System. The Decree will not affect or determine claims to groundwater or to stock watering uses in Section 5.

1. The State shall prepare a Proposed Partial Final Judgment and Decree on Surface Water Irrigation Rights in Section 5 of the Rio Chama Stream System (“Proposed Decree”) with an Addendum that summarizes the water rights adjudicated and decreed therein. The Proposed Decree, if approved by the Court after opportunity for *inter se* objections and hearings thereon, will represent the final adjudication of all claims for surface water irrigation rights in Section 5 and bind all claimants of water rights of any type in Section 5 – subject to the rights of parties who are not included within Section 5 to object to the Decree, or to contest any individual water right described in the Decree, in any further *inter se* proceedings ordered by the Court for the Rio Chama or Rio Grande Stream Systems generally.

2. The State shall prepare a Notice of Proposed Partial Final Judgment and Decree on Surface Water Irrigation Rights in Section 5 of the Rio Chama Stream System (“Notice”) to be served on defendants in Section 5, including the United States and community ditches in Section 5. The Notice shall be mailed to the last known address of individual subfile defendants as they are listed in the Court’s records.¹ The State shall not be required to make a determination of current ownership of tracts, nor mail notices to any person not a party to these proceedings. A successor-in-interest to an individual subfile defendant may request substitution of parties under Fed. R. Civ. P. 25(c) in order

¹ Under the *Procedural Order for the Adjudication of Water Rights Claims in the Rio Gallina Section of the Rio Chama Stream System* filed March 15, 2000 (Doc. 5890), all claimants, whether or not they are represented by counsel, are responsible for informing the Court of any changes in their mailing address or changes in ownership of the water rights or real property associated with their rights. See *Procedural Order* filed March 15, 2000, Section III.

to participate in the proceedings. The State shall file an appropriate Certificate of Service with the Court following the mailing of the Notice to defendants in Section 5.

3. The State shall prepare a Notice for publication to inform all known and unknown claimants of water rights in Section 5 of their right to participate and offer evidence in support of *inter se* objections to the Proposed Decree in Section 5, and that this *inter se* proceeding will be their only opportunity to file objections to the determination of surface water irrigation rights described in the Proposed Decree. The Notice for publication shall be published once each week for four consecutive weeks in the Rio Grande Sun, which is a newspaper of general circulation in Section 5 and the Rio Chama Stream System generally. The State shall file an appropriate Proof of Publication with the Court following publication of the Notice.

4. Copies of the Proposed Decree and Addendum, and hydrographic survey maps showing the location of all tracts described in the decree, shall be made available for public inspection at the Cuba Public Library, at the Office of the Rio Arriba County Clerk in Tierra Amarilla and in Española, at the Federal District Court in Santa Fe and in Albuquerque, and at the Utton Center at the UNM School of Law. Copies shall also be available for inspection at the Water Resource Allocation Program (WRAP) of the Office of the State Engineer in Santa Fe. The Proposed Decree (without the Addendum) shall be posted on the Office of the State Engineer's website.

5. The Notice of Proposed Partial Final Judgment and Decree on Surface Water Rights and the Notice for publication shall inform claimants in Section 5 that all *inter se* objections to the Proposed Decree must be filed with the Court, in person or by mail for receipt no later than **March 1, 2010**. Claimants in Section 5, known and unknown, shall be notified that this will be their only opportunity to make *inter se* objections to the determination of surface water irrigation rights

described in the Proposed Decree. Blank forms that may be used for filing *inter se* objections shall be available to the public with the Proposed Decree at the locations described in paragraph 4 above. The form shall also be included with the Notice of Proposed Final Judgment and Decree to be mailed to defendants in Section 5.

6. If *inter se* objections are timely filed, the State shall prepare a report that summarizes all objections and make the report available for public inspection at the locations described in paragraph 4 above by **April 5, 2010**. The State shall mail a copy of the *inter se* objections to those persons whose water rights are the subject of those objections, by certified mail, return receipt requested, and file an appropriate Certificate of Service with the Court. Persons who file timely *inter se* objections, and the affected subfile parties/defendants, shall be required to attend a scheduling and pretrial conference with the Court in Santa Fe. Further procedures for hearing objections to the Proposed Decree shall be determined at the conference.

7. Whether or not they have filed an objection, all persons having water rights in Section 5 may participate in the proceedings to resolve *inter se* objections. **All persons having water rights in Section 5 will be bound by the outcome of the proceedings to resolve *inter se* objections.** Persons that elect to participate in the proceedings to resolve *inter se* objections shall file a notice of intent to participate with the Court no later than **May 17, 2010**. Blank forms that may be used for this purpose shall be available to the public with the report that summarizes *inter se* objections. Persons that elect to participate in the proceedings to resolve *inter se* objections shall also be required to attend the scheduling and pretrial conference with the Court in Santa Fe.

8. The State has prepared draft copies of the Proposed Decree (without the Addendum or associated hydrographic survey maps), a proposed Notice to be served on defendants in Section

5, a proposed Notice for publication, a proposed *Inter Se* Objection Form, and a proposed Notice of Intent to Participate in *Inter Se* Proceedings, which are attached hereto as Exhibits B, C, D, E and F.

9. Mary E. Humphrey, counsel for the Gallina–Capulin Acequia Association and the community ditches in Section 5, supports the granting of this motion and has reviewed and approved the form of the Proposed Decree and Notices attached hereto.

WHEREFORE the Plaintiff State of New Mexico requests that the Court enter its Order granting this Motion and adopting the procedures set forth herein for the purposes of entry of a Partial Final Judgment and Decree on Irrigation Water Rights in Section 5 of the Rio Chama Stream System.

DATED November 24, 2009.

Respectfully submitted,

/s/ Ed Newville

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of November, 2009 I filed the foregoing Motion electronically through the CM/ECF system which caused the parties on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail; and served the following non-CM-ECF participants in Section 5 with a copy of the foregoing Motion, without exhibits, via first class mail, postage prepaid addressed as indicated on the Certificate of Service of Mailing to Defendants in Section 5 filed separately this same day.

/s/ Ed Newville

Edward G. Newville